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EXAMINER

BOVEJA, NAMRATA

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3622

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Please find below and/or attached an Office communication concerning this application or proceeding.



### **DETAILED ACTION**

1. *This Office Action is responsive to the correspondence filed on 1/9/06. The amendments to the claims and the specification have been entered. Claims are independent. Claims 18 and 28 have been cancelled. New claims 29 and 30 are added.*

### ***No Requirement for Restriction***

2a. In a telephone conversation on 9/21/05, Ms. Sue Shaper, representing Applicants, stated that claims 1-20 and 27-28 would be elected if a restriction requirement is made. Upon further consideration, no restriction requirement is herein made, so the issue is moot.

### ***Objections to Specifications***

2b. *Applicant amendment has successfully addressed the objections pertaining to page 5 and Table 4, and these objections are withdrawn.*

### **Rejections - 35 USC § 112**

3. *Applicant amendment has successfully addressed the 35 U.S.C. 112, second paragraph rejections for claims 7-13, 18, 25, 27, and 28.*

### **Double Patenting**

4a. *The Examiner accepts the Applicants' acknowledgement that a terminal disclaimer to be copending Application No. 09/947730 will be filed in due time.*

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4b. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. *Claims 1-20 and 27-30 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16, 18, and 19 of copending Application No. 09/947,730.*

Although the conflicting claims are not identical, they are not patentably distinct from each other because the copending application 09/947,730 recites

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transmitting, prior to broadcast, a report on ads to be run in a future period while the instant claims claim transmitting a report on ads as-run in a past period.

It is admitted at Specifications [0006] that "Prior to the present invention, when a client advertiser or broadcast media wanted advance notice of the times/channels/stations/sites scheduled for airing that client's ads, the request entailed significant human intervention. The same is true for "as-run" reports... Typically, a person associated with a communication company would first need to review a record of which clients wanted such advance notice of scheduled times and locations for ad airing, or "as-run" reports. The person would then typically manually request a "traffic and billing system" (or some equivalent) to download a scheduled time/site report or verified run report for or including that client." Thus a report on ads to be run in a future period as well as a report on ads run in a past period are admittedly known and are compiled manually from data derived partly from traffic and billing systems. Both applications claim compiling reports automatically instead of manually.

It would have been obvious to one skilled in the art at the time the invention was made to use as-run data from traffic and billing systems and substitute them to the advance notice data in the automated reporting method and systems, as claimed in application 09/947,730 for the advantage of sending reports on as-run ads, in an automated and efficient manner, paralleling the manual reporting process on advance-notice and "as-run" ads disclosed in the specification.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

**Claim Rejections - 35 USC § 103**

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. *Claims 1-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over admitted art in view of Rogers et al, US 5701451 A.*

As to claims 1-2, and 4:

communicating a timing of ad broadcasts by accessing at least one electronically stored record indicating times for ads broadcast in a (past) period; generating a client report including at least a time for a broadcast of an ad in a period; and transmitting the report to an advertising client is admittedly known to

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be done manually (Specifications page 2, Fig 1A).

Further accessing an electronically stored record generated at least in part by broadcast inserter equipment and accessing an electronically stored record generated at least in part by a traffic and billing system manually is also admittedly known (Specifications [0005] to [0008], Fig 1A)..

Transmitting such report by fax is also admittedly known (Specifications [0005] to [0008], Fig 1A).

However, it is not admitted the above steps are automated.

However, it was known at the time of the invention that merely providing an automatic means to replace a manual activity which accomplishes the same result is not sufficient to distinguish over the prior art, *In re Venner*, 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA 1958). For example, simply automating the step of culling the needed information and manipulating the data to produce the report automatically as claimed gives you just what you would expect from the manual step as admitted. In other words there is no enhancement found in the claimed steps. The claimed steps above only provide automating the manual activity. The end result is the same as compared to the manual method. A computer can simply produce the report faster. The result is the same.

It would have been obvious to a person of ordinary skill in the art at the time of the invention to automate the above discussed steps because this would speed up the process of producing a report for clients, which is purely known, and an expected result from automation of what is known in the art.

Further, Rogers discloses:

A World Wide Web browser makes requests to web servers on a network which receive and fulfill requests as an agent of the browser client, organizing distributed sub-agents as distributed integration solution (DIS) servers on an intranet network supporting the web server which also has an access agent servers accessible over the Internet. DIS servers execute selected capsule objects which perform programmable functions upon a received command from a web server control program agent for retrieving, from a database gateway coupled to a plurality of database resources upon a single request made from a Hypertext document, requested information from multiple data bases located at different types of databases geographically dispersed, performing calculations, formatting, and other services prior to reporting to the web browser or to other locations, in a selected format, as in a display, fax, printer, and to customer installations or to TV video subscribers, with account tracking.

Thus Rogers discloses electronically grabbing information from multiple sources and formatting the information in any way desirable, which is the equivalent of Applicant's reporting step as a report is essentially a form. Thus the



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technology capable of doing the automated step of an admittedly known manual step is available, which lends support to the application of *In re Venner* in this instance.

*NOTE:*

*As to the accessed data in claim 1 being "times", it is noted these claimed data are non-functional descriptive material, because it is not claimed what is done with that data after the steps of accessing (which logically includes identifying). Claim 1 boils down to accessing a database record, generating a report from accessed data, and then transmitting the report. Further, the accessed records including time for a broadcast of an ad are either explicitly or implicitly admitted (see [0005] and [0006] "scheduled times and locations for ad airing").*

Further it also noted, as to claim 2, that the system being called a "traffic and billing" system also is not given weight because the name of the system does not impact the method step as well. *Ex parte Pfeiffer* (see more details below).

As to claim 3, automatically generating and transmitting a plurality of reports is obvious if many advertiser clients or different ad campaigns for the same client are involved to make each report relevant to the subject matter/client.

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As to claim 5, including an ad in a communication with a client is well-known, such as including a logo or a company motto, to remind the client of the nature and/or quality of one's service or to apprise of a discount, thus including an advertising banner in a transmission of the report in this case, would have been obvious for the same marketing reasons.

As to claim 6, "an account manager for the client" is not given patentable weight as the title of the recipient does not impact the method step.

See *Ex parte Pfeiffer*, 135 USPQ 31 (BdPatApp&Int 1961), which held that, "to be entitled to such weight in method claims, the recited structural limitations therein must affect the method in a manipulative sense and not to amount to the mere claiming of a use of a particular structure". In this case, there does not seem to be any impact on the manipulative steps of the method because of the name of the recipient, similar to the reasoning in *Ex parte Pfeiffer*.

As to claim 19 (dependent on claim 1), generating a report including a title of an ad would have been obvious to indicate which ad it relates to.

As to claims 7-16, it is admitted "traffic and billing programs" to schedule ads or spots for one or for a variety of media at a variety of times and possibly a variety of geographical locations over a designated period for a set of advertising clients, as per the clients' contracts are well-known. A traffic and billing system, at least shortly before a designated period begins, produces a record (such as a

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Schedule Log or an Event Log and/or an Inserter Log) of all scheduled spots for ads on the set of media the communications company manages within a next designated period. Specifications at [0039]. Thus "compiling a schedule log" is admittedly well known. Also see Specifications at [0052].

Further verification logs or (verified files logs) are admittedly typically produced by a system's commercial insertion equipment and returned to a traffic and billing system. Specifications at [0011], [0073], FIG. 1B.

Further, a verified file is admittedly "typically assumed to be associated with a version of a Schedule Log, indicates times that each ad was actually run. If an ad for whatever reason was not run, that too is indicated." Specifications at [0073]. Thus "outputting a measure of the effectiveness of a broadcast media in executing advertising in accordance with schedule log being an indicia of an omitted ad" is admittedly known.

Accessing a schedule log, compiling a schedule report, and transmitting the report to advertisers clients admittedly has been done manually. As discussed above, automation of manual processes (compiling the report) is not patentable in view of In Re Venner and Rogers, as discussed above.

As outputting a measure of the effectiveness of a broadcast media in executing advertising in accordance with schedule log being an indicia of an omitted ad is admitted known, it would have been obvious to one skilled in the art at the time the invention was made to also add this data to the report in order

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to apprise the client of the success of the insertion and/or the reasons of non-insertion. Specifications at [0073]. Again, as to this additional data, Rogers also shows the capability of grabbing this information to automate manipulation and reporting of the data as desired.

Further, reporting for each advertising client is obvious to make sure the report is addressed to the right client.

Further, automatically generating and transmitting a plurality of reports is obvious if many advertiser clients are involved to serve all these clients.

As to claim 17, it is admitted the manual reporting procedures apply both to advance notice of ads to be run as well as "as run" ads. Specifications [0006]. It would have been obvious to one skilled in the art at the time the invention was made to add transmitting a schedule report prior to a broadcast to the automatic reporting of as-run ads method so far discussed, to add further value to the automatic reporting (of as-run ads) method by providing automatically and efficiently advance notice of ads to be run. Since it is admitted the relevant needed data (for as run ads and for advance notice) are readily available for report compilation, if desired, and has been so done manually, it would have been obvious to one skilled in the art at the time the invention was made to do the same automatically for the obvious efficiency advantages.

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As to claim 20, as to the accessed data, being “media, times, client and title” it is noted those claimed data are non-functional descriptive material because it is not claimed what is done with that data after the steps of accessing (which also logically includes identifying). Claims 7 and 13 boil down to accessing a database file, generating a report from accessed data, then transmitting the report. Further the accessed records including media, time, and titles of the ad are either explicitly or implicitly admittedly known (see [0005],[0006] “scheduled times and locations for ad airing”) .

Further, as to claim 20, the data being created by “different” systems does not impact the positive step of identifying such data, thus “created by different... systems” is not entitled to patentable weight. See *Ex parte Pfeiffer*, 135 USPQ 31 (BdPatApp&Int 1961), which held that, “to be entitled to such weight in method claims, the recited structural limitations therein must affect the method in a manipulative sense and not to amount to the mere claiming of a use of a particular structure”. In this case, there does not seem to be any impact on the manipulative steps of the method because of the number of systems involve which creates the data before they are later accessed/identified. (It is noted however that Rogers teaches grabbing data from many data sources, so even if “created by different... systems” is given patentable weight, the admitted art in view of Rogers disclose the method of claim 20).

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As to claims 21-26, 27-28, the limitations of these claims that are common to the previous claims are rejected as discussed above. Further ratings service files, such as Nielson ratings, are admittedly known and typically transmitted to broadcasters by media the subsequent day. Specifications at [0011] and [0072].

It would have been obvious to one skilled in the art at the time the invention was made to add Nielson ratings to the report to provide clients with further additional valuable information. Again, as to this additional data, Rogers also shows the capability of grabbing this information to automate manipulation and reporting of the data as desired.

*As to claims 29 and 30, the admitted art does not disclose posting the report on a website on the Internet for client access, but Rogers discloses "prior to reporting to the web browser or to other locations, in a selected format,.. as in a display, fax, printer, and to customer installations", thus Rogers clearly shows reports shown on websites for client access. It would have been obvious to add such a feature of Rogers to the admitted to conveniently present the reports to clients as disclosed by Rogers (abstract).*

### **Response to Arguments**

#### **8. Preliminary matters:**

What is admitted in the Specification:

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*Applicants argue the specification does not admit that "electronically accessing" records of a traffic and billing system is known. However Applicants now state that some traffic and billing systems can download i.e. print certain reports. It is first noted that "download" means in computer science "to transfer (data or programs) from a server or host computer to one's own computer or device" per dictionary.com. To restrict the plain meaning of "download" now to only printing is adding new matter to the specifications. Further it is noted that even if "download" means "print", getting records from such systems via an electronic printer requires "electronically accessing" such records first to send to the printer. Further again at specifications page 2, lines 19-21" it is disclosed "The instant system is adapted to automatically electronically communicate with an electronically stored record of ads scheduled to be "aired", typically created by one of a variety of "traffic and billing systems" or their equivalent." (underline emphasis) added. Thus an electronically stored record is available to be accessed electronically, even via printers.*

*The person of ordinary skill:*

*Applicants argue the person of ordinary skill in the instant art would be an "operations and traffic manager" and that such manager would not know to do all the electronic accessing of records, etc..., to do so in a safe manner, as argued at page 3 last paragraph. The Examiner disagrees that such an OPERATIONS AND TRAFFIC manager is the person of ordinary skill in the art in this instance.*

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*Rather, it would be one skilled in computer software and hardware and familiar with the known systems.*

*MPEP 2141.03 state FACTORS TO CONSIDER IN DETERMINING LEVEL OF ORDINARY SKILL. They include (1) the educational level of the inventor; (2) type of problems encountered in the art; (3) prior art solutions to those problems; (4) rapidity with which innovations are made; (5) sophistication of the technology; and (6) educational level of active workers in the field."* *Environmental Designs, Ltd. v. Union Oil Co.*, 713 F.2d 693, 696, 218 USPQ 865, 868 (Fed. Cir. 1983), cert. denied, 464 U.S. 1043 (1984). The "hypothetical person having ordinary skill in the art to which the claimed subject matter pertains would, of necessity have the capability of understanding the scientific and engineering principles applicable to the pertinent art." *Ex parte Hiyamizu*, 10 USPQ2d 1393, 1394 (Bd. Pat. App. & Inter. 1988).

*Here, Rogers shows evidence of the level of skill in the art, in the sophistication of the technology of pulling data from diverse sources. Further, on page 12, in reference to "copying and failure of others", Applicants state that another programmer worked on the problem of producing the reports, though he was unsuccessful at producing a working report program, where on the other hand, the inventor was successful. That is further evidence that such programmer is a person skilled in the art, and not an OPERATIONS AND TRAFFIC manager.*



9. *Matters of Law:*

*Applicants argue Rogers is non-analogous art. However, "a prior art reference is **analogous** if the reference is in the field of applicant's endeavor or, if not, the reference is **reasonably pertinent** to the particular problem with which the inventor was concerned." In re Oetiker, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). Also, "Section 103 requires us to presume that the artisan has full knowledge of the prior art in his field of endeavor and the ability to select and utilize knowledge from analogous arts." Lamont v. Berguer, 7 USPQ2d 1580 (BdPatApp&Int 1988).*

*Rogers is analogous art because one faced with the problem of pulling data from different sources as faced by the inventor, would look to the solutions presented by workers in the computer field such as Rogers.*

*Applicants argue Rogers does not teach how to reach into and retrieve data from any system. This is clearly not the case. Rogers discloses "...DIS servers ... retrieving, from a database gateway coupled to a plurality of database resources ..., requested information from multiple data bases located at different types of databases geographically dispersed, performing calculations, formatting, and other services prior to reporting to the web browser or to other locations, in a selected format, as in a display, fax, printer, and to customer installations ..with account tracking. " (abstract). Thus Rogers clearly teaches reaching into different databases of many systems to retrieve the requested data.*

*Further, the instant claims do not claim how to reach into and retrieve data in any details either, thus the argument is unpersuasive. The instant claims do not even claim pulling records from traffic and billing system software specifically, thus again the attacks on Rogers, on page 6, 3<sup>rd</sup> full paragraph, are unpersuasive.*

*Applicants further argue that there is not per se automation rule based on In Re Venner. Assuming without presently conceding that Applicants assertions are correct, it is noted however that, in addition to In Re Venner, Rogers discloses the required automation steps. Indeed Rogers discloses, .....DIS servers ... retrieving, from a database gateway coupled to a plurality of database resources ...,requested information from multiple data bases located at different types of databases geographically dispersed, performing calculations, formatting, and other services prior to reporting to the web browser or to other locations, in a selected format, as in a display, fax, printer and to customer installations .... " (abstract). Thus Rogers clearly teaches automatically (i.e. by computer) and electronically grabbing information from multiple sources and formatting the information in any way desirable, which is the equivalent of Applicant's automatic reporting steps (since a report is essentially a form).*

*Applicants further argue that Ex Parte Pfeiffer has been effectively overturned by In Re Ochiai, In Re Brouwer. Applicants cite MPEP 2116 in support. The Examiner notes that MPEP 2116 deals with "materials on which a process is carried out" and MPEP 2116.01 which cites In Re Ochiai, In Re*

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*Brouwer deals "Novel, Unobvious Starting Material or End Product", i.e. all chemicals/ and materials cases.*

*Thus it seems the facts of the cases cited in MPEP 2116 may not apply to the instant application. Further, even assuming that Applicants are correct in their analysis that In Re Ochiai, In Re Brouwer effectively overrule Ex Parte Pfeiffer, it is noted now and stated before, however, that "Rogers teaches grabbing data from many data sources, so even if "created by different... systems" is given patentable weight, the admitted art in view of Rogers disclose the method of claim 4." In other words, a per se rule alone was not applied in this case, since Rogers was applied as secondary reference.*

10. *Arguments regarding the 35 USC 103 rejections:*

*In arguing the synergistic value of automation both to inserters and to client advertisers, at page 8, Applicants seems to suggest the references must be combined for the same purpose as contemplated by the inventor. However, although the references do not disclose or suggest the existence of applicants' problem or its cause, claims are rejected under 35 U.S.C. 103, since the references suggest a solution to problem; it is sufficient that references suggest doing what applicants did, although they do not teach or suggest exactly why this should be done, other than to obtain the expected superior beneficial results." In re Gershon, Goldberg, and Neiditch, 152 USPQ 602 (CCPA 1967). "...law of obviousness does not require that references be combined for reasons contemplated by inventor, but only looks to whether some motivation or suggestion*

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*to combine references is provided by prior art taken as whole. "In re Beattie, 24 USPQ2d 1040 (CA FC 1992).*

*As to claim 6, nothing in the specifications require an interpretation that "an account manager for the client" is an in-house person, and such a transmission of data is an in-house one, absent specific definitions. Applicants are reminded of the broadest interpretation rule. Nothing is claimed what this person will do with the information once he/she receives it so the argument as to what this person might influence is unpersuasive. Even if "an account manager for the client" is given weight, it would be just be interpreted as a person having some working relationship with the client, in-house or outside. It is admitted that such a person having some working relationship with the client receives report information manually (disclosure page 2). As the admitted art in view of Rogers discloses automatic transmission of reports, it would have been obvious to automatically transmit to this same person as was done manually as well for the same reasons: informing the relevant person.*

*At pages 8-9, Applicants further seem to argue the collateral benefit of selling upgraded contracts warrants patentability. However, Applicants do not cite any precedent in support. Further it is noted the **claiming of a new use, new function** or unknown property which is inherently present in the prior art does not necessarily make the claim patentable. In re Best, 562 F.2d 1252, 1254, 195 USPQ 430,433 (CCPA 1977). See MPEP 2112. Here selling upgraded contracts may just be an obvious result of the improved communication with clients, which is a natural result from automatic generation*

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*of client reports. As stated earlier automating the manual activity of generating client reports by computer just makes the generation faster. It is natural that providing more requested reports faster will make clients happier.*

*With regards to Nielson ratings, while they may enhance the Applicant's proposed invention, these ratings are admittedly known and typically transmitted to broadcasters by media the subsequent day. Specifications at [0011] and [0072].*

*It would have been obvious to one skilled in the art at the time the invention was made to add Nielson ratings to the automated "as run" report to provide clients with further additional valuable information. Again, as to this additional data, Rogers also shows the capability of grabbing this information to automate manipulation and reporting of the data as desired.*

*The examiner disagrees with all the traverses of admitted art raised by Applicants. The admissions are on their faces as set forth above.*

**11. Affidavits and secondary evidence of non-obviousness:**

*The Examiner has given all due consideration to the affidavits submitted in the instant case, but regrettably they remain unpersuasive to rebut the prima facie case of obviousness. MPEP 716.01 (a) requires objective evidence and proof of secondary considerations facts for the evidence to be of probative value. The affidavits do not provide such objective evidence or proof of secondary considerations facts.*

*Per MPEP 716.01(b) a nexus is required, between the merits of the claims and the evidence of secondary considerations. Here, the full scope or breadth of the claim language is not covered by the affidavits. The Affidavits seem to track the problem solved and arguably a preferred embodiment instead of the broad claim language. As stated below, the instant inventor's program may be successful in the particular code he uses which is not claimed and not in the broad methods that are now claimed.*

*MPEP 716.01 (c) requires the evidence of secondary considerations facts to be of probative value. The affidavits do not provide such objective proof that the methods herein claimed are the reason of the success.*

*MPEP 716.01(d) requires consideration in light of the full record. Regrettably, the submitted affidavits do not overcome the facts of the prima facie case.*

*Further, at page 12, regarding "copying and failure of others", Applicants state that another programmer worked on the problem of producing the reports, though unsuccessful at producing a working report program while the inventor was. That is evidence that such programmer is a person skilled in the art. Applicants also state the competitor programmer is to recreate the prototype (created originally by the inventor), thus implying that, if the inventor is successful, it may be in the particular program code he came up with. Such code is not claimed. Thus all this evidence of failure of others is unpersuasive.*

### **Conclusion**

12. Applicant's amendment necessitated the new ground(s) of rejection

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*presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.***

*See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).*

*A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.*

#### **Point of Contact**

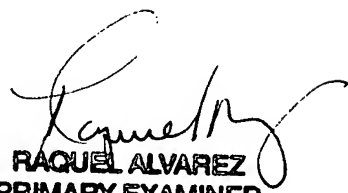
*Any inquiry concerning this communication or earlier communications from the examiner should be directed to Namrata (Pinky) Boveja whose telephone number is 571-272-8105. The examiner can normally be reached on Mon-Fri, 8:30 am to 5:00 pm.*

*If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on 571-272-6724. The **Central Fax Number** for the organization where this application or proceeding is assigned is **571-273-8300**.*

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*Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 1866-217-9197 (toll-free).*

NB

June 7<sup>th</sup>, 2006

**RAQUEL ALVAREZ**  
**PRIMARY EXAMINER**